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one of whom, Mary by name, is the great grandmother of the petitioner and through whom she claims. Mary was the owner of one undivided third subject to her mother's right of dower. In 1826 the husband of one of the daughters, and a third person, purchased the interest of the widow and the second daughter, receiving deeds therefor. These grantees, in 1829, conveyed 'he whole of the property by warranty deed, containing the usual covenants and the wife joined in relinquishment of her right and claims. This deed, acknowledged by all three, was not recorded until August 22, 1902. Samuel Dyer, the father of defendant, and from whom he claims, entered into possession under this deed in 1835, and from that time until the present, the possession of father and son, respectively, has been open, peaceable, continuous and exclusive. On June 2, 1886, Mary, then 86 years of age and a widow, conveyed by quit-claim deed to her son, petitioner's grandfather, "All right and title which I hold in said property." *Held*, that the possession of the Dyers was such as to constitute an ouster and Mary's right was barred. *Joyce v. Dyer et al.* (1905), — Mass. —, 75 N. E. Rep. 81.

While the conveyance to Samuel Dyer purported to convey the entire property, it did not convey the interest of Mary, and therefore Samuel Dyer became a tenant in common with her. The general rule is that the possession of one tenant in common although exclusive, does not amount to a disseisin of the co-tenant, for his possession is to be taken as the possession of the co-tenant, and not adverse, and therefore the co-tenant will not be barred by lapse of time. *Alexander v. Kennedy*, 19 Tex. 488, 70 Am. Dec. 358; *Hogg v. Beerman*, 41 Ohio St. 81, 52 Am. Rep. 71; *Colman et al. v. Clements et al.*, 23 Cal. 245. However, there may be an ouster of one tenant in common by the other and the possession thereafter becomes adverse, and if continued for a sufficient length of time, the right of the co-tenant out of possession may become barred. *Rickard v. Rickard*, 13 Pick. 251, 253; *Doe v. McCreary*, 2 Ind. 405; *Bellis v. Bellis*, 122 Mass. 414, 415. All the evidence in this case pointed to an actual ouster and indicated that the possession was not only exclusive but adverse. Dyer did not enter as a tenant in common but claimed the whole under the conveyance. Mary must be presumed to have had notice that the possession was adverse; for while the deed had not been recorded, she lived in intimacy with the Dyers and made no objections whatever to their acts of exclusive possession. At the time she attempted to convey her interest to her son by statute the deed was required to be delivered on the premises. Therefore, as the grantor was then disseised, the deed was of no effect even if she had an interest to convey. *Sohier et al. v. Coffin et al.*, 101 Mass. 179.

**WILLS—ATTESTATION—MEANING OF "IN THE PRESENCE OF."**—Where, after testator had signed his will in the presence of the attesting witnesses, they took it into another room and there signed it, being out of testator's sight at the time, and then returned to his room and read the will to him, showing him their signatures, with which he expressed satisfaction. *Held*, that the attestation was not "in the presence of" the testator. *Calkins v. Calkins* (1905), —Ill. —, 75 N. E. Rep. 182.

The decision is in line with the older cases holding that the words

"in the presence of" should be strictly construed, the tests of the presence being vision and mental comprehension. 30 AMER. & ENG. ENCYC. OF LAW (2nd ed.) 598; 1 JAR. ON WILLS, 120; 1 UNDERHILL ON WILLS, § 196; *Mendell v. Dunbar*, 169 Mass. 74, 47 N. E. Rep. 402, 61 Am. St. Rep. 277; *Boldry v. Parris*, 2 Cush. (Mass.) 435. Thus, where testator is unconscious when the attestation is made, it is void. *Sanders v. Stiles*, 2 Redf. (N. Y.) 1. So when he cannot see the signing, even though it is in the same room and near him, it is not in his presence. *Reed v. Roberts*, 26 Ga. 441. But if testator can see the act, it is immaterial whether it occurs in his immediate presence or not. *Shire v. Glasscock*, 2 Salk, 688; *Drury v. Connell*, 177 Ill. 43, 52 N. E. 368. In Michigan under almost identical circumstances with those of the principal case, it was held that the attestation was good on the ground that only a substantial compliance with the statute was necessary. *Cook v. Winchester*, 81 Mich. 581, 46 N. W. Rep. 106, 8 L. R. A. 822. See also *Cunningham v. Cunningham*, 83 N. W. 58, 51 L. R. A. 642, 81 Am. St. Rep. 256; *Sturdivant v. Birchett*, 10 Gratt. (Va.) 67; and *Riggs v. Riggs*, 135 Mass. 238. These cases have never been regarded favorably in this country on account of their tendency toward bringing about fraudulent practices. See note by Bigelow, 1 JARMAN ON WILLS, 122, note 1. In the principal case, *Cook v. Winchester* and *Cunningham v. Cunningham* were cited and criticised. The decision in the principal case is purely technical, as the court regarded the circumstances as precluding any attempt at fraud. For a very complete note and collection of cases see note to *Mandeville v. Parker*, 31 N. J. Eq. 242.